IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1813 of 2005

Digvijay Textile Mills & Anr. .. Petitioners

versus

KMullappa Chandrappa Begar .. Respondent

...

Mrs.Meena H. Doshi for the petitioner

Ms.Nayana Buch with B.B. Dholakia for the respondent no.1.

CORAM : D.G. KARNIK,J.

DATED : 25th July 2005.

P.C.:

1. Heard learned counsel for the parties.

2. The respondent who had attained the age of 60 was sought to be superannuated by the petitioner. Standing order no.20A applicable in the present case reads as under:-

> "20-A. An operative shall retire from service on attaining the age of

> 60 years, but a male operative shall be retained in service, if he continued to be efficient, upto the age of 63 years, provided that when retrenchment becomes necessary a person who has completed the age of 60 may be retired in preference to younger men"

3. The said standing order has been interpreted by a Division Bench of this Court in Tata Textiles Mills (UC) Vs. Munilal Nanhoo Yadav reported in 1991 CLR 120. Therein, the Division Bench has held that the workmen has a right to continue in service upto the age of 63 which is defeasible only if the management bonafidely comes to the conclusion that the workmen had ceased to be efficient. The Industrial Court has held that the respondent was efficient. The finding is a possible finding which cannot be interfered in exercise of a writ jurisdiction. Therefore, the respondent has a right to be continued in service upto the age of 63 years.

4. Learned counsel for the petitioner submits that the respondent was surplus and instead of retrenching him, the management decided to superannuate him to retain the younger people. The standing order no.20A empowers the management to retrench a person who had attained the age of 60 years in preference to the younger people. In my

view the standing order no.20A does not empower the management to superannuate a person who had attained the age of 60 years to retain the younger people, but confers only the power to retrench the employee who has attained 60 years of age. Retrenchment has its own consequences and the person to be retrenched is required to be paid retrenchment compensation. The management therefore, has a choice to retrench the respondent but not the choice to superannuate him, if he is surplus.

5. There is no merit in the petition. Petition is rejected.

D.G. KARNIK, J